SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 650

PHIL WHITUS AND LEON DAVIS, PETITIONERS,

vs.

GEORGIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

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IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

Number 1229

PHIL WHITUS, Petitioner-Appellant,

vs.

THE STATE OF GEORGIA, Appellee.

NOTICE OF APPEAL—Filed October 30, 1965

To the Honorable Martha B. Hoggard, Clerk of the Above Entitled Court, and to the Honorable Fred B. Hand, Jr., Solicitor Thereof:

You and each of you take notice that PHIL WHITUS, the Petitioner in the above styled matter, hereby appeals to the Supreme Court of the State of Georgia the verdict of guilty rendered by the jury on the 19th day of October, 1965, in the Superior Court of Mitchell County, Georgia.

Petitioner specifies, as necessary for a clear understanding of all the issues in said matter, the following:

1. The warrant.
2. The bill of indictment returned by the Grand Jury of the April 1965 Term.
3. A *complete* transcript of the evidence taken at said trial.

This 29th day of October, 1965.

P. Walter Jones.

[fol. 4] [File endorsement omitted]

IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

Number 1229

PHIL WHITUS, Petitioner-Appellant,

vs.

THE STATE OF GEORGIA, Appellee.

AMENDMENT TO NOTICE OF APPEAL—Filed November 13, 1965

To the Honorable Martha B. Hoggard, Clerk of the Above Entitled Court, and to the Honorable Fred B. Hand, Jr., Solicitor Thereof:

You and each of you take notice that PHIL WHITUS, the Petitioner in the above styled matter, hereby amends his original notice of appeal to the Supreme Court of the State of Georgia from the verdict of guilty rendered by the jury on the 19th day of October, 1965, in the Superior Court of Mitchell County, Georgia, as follows:

A. By adding thereto as additional evidence the following:

1. The Challenge to the Array of Petit Jurors filed with this Court and heard on the 16th day of October, 1965, and overruled on the same date.

2. A complete transcript of record in the overruling of said motion.

3. The evidence presented by the defendant at the inception of the trial showing that he had not been [fol. 5] arraigned nor had the defendant waived arraignment.

This 12th day of November, 1965.

P. Walter Jones.

P. O. Box 1115, Albany, Georgia.

[fol. 6] IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

WARRANT—November 16, 1959

GEORGIA, Mitchell County

Personally Comes John M. Maples Who, on oath says to the best of his knowledge and belief Phil Whites did, in said County, on the 15 day of Nov 19 59 commit the offense of Murder The murder of Jones Eldridge (Pete) Glenn-

$1,500

And deponent makes this affidavit that a warrant may issue for his arrest.

John M. Maples (SEAL)

Sworn to and subscribed before me 16 day of Nov 19 59

C. Pruett J.P.

GEORGIA, Mitchell County

To any Sheriff, Constable or Marshal of said State.— GREETING:

John M. Maples Makes oath as above which is hereby made part of this warrant. You are hereby commanded to arrest Phil Whites and seize a sufficient amount of his property to pay all costs in event of his conviction and bring them before me, or some other judicial officer of said County to dispose of as the law directs. Fail not.

Witness my hand and seal 16 Nov 19 59

C. Pruett (SEAL) J.P.

THE STATE
VERSUS

After hearing the evidence in the above case it is ordered that the defendant be committeed for said offense. And in default of his giving bond, with good security, in the sum of ..... Dollars for his appearance at the ..... Court, to be held in said County, on the ..... Monday in ..... 19..... that he be committeed to Jail until he be discharged by due process of law.

Witness my hand and seal ..... 19.....

..... (SEAL) J.P.

[fol. 7]

No. 14 Page

WARRANT

THE STATE

VERSUS

Phil Whitus

Charge Murder

John M Moyle Prosecutor

Warrant

Docket 5-1

Examination 11-19-65

Subpoena Witness DGB

Examination Witness

Search Warrant

Commitment

WITNESS:

Smc as Lynn Davis

B

Dcsg

Cooper & Burton

[fol. 8] IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

INDICTMENT—Filed April 12, 1965

THE GRAND JURORS, selected, chosen and sworn for the County of Mitchell to-wit:

1 C. B. Collins Foreman.

2 D. B. Harrell
3 James Lee Adams
4 John S. Gee
5 [illegible]
6 E. T. Hochliffe
7 [illegible]
8 Drewry Robinson SR
9 J. C. Bellamy JR.
10 Ray Nazworth
11 [illegible]
12 J. C. McGilliard
13 H. C. King
14 John C. Kemper
15 Lee Ann Collins
16 Drewry O. Hayes
17 Clesta A. Scruggs
18 Walter L. Rideau
19 Hayward Snipes
20 Theo Thompson
21 L. T. Hatcher
22 Lewis M. Finlay
23

In the name and behalf of the citizens of Georgia, charge and accuse Leon (Lynn) Davis and Phil Whitus with the offense of Murder for that the said accused, in the County aforesaid, on the 15th day of November in the year of our Lord, Nineteen Hundred and Fifty Nine with force and arms, and unlawfully, did then and there feloniously and with malice aforethought kill and murder, one James Eldridge "Peter" Glenn, by shooting him to death with a pistol; all

contrary to the laws of said State, the good order, peace and dignity thereof.

FRED HAND, JR., Solicitor General

[fol. 9]

WITNESSES FOR THE STATE
Mrs. Peter Glenn (Douglas Townsend)
John M. Maples
Lynwood Williford
Lt. Cecil Franklin
Dr. Herman D. Jones

The Defendant Leon Davis

waive formal arraignment; copy Bill of Indictment, list of witnesses sworn before the Grand Jury, and agree to strike from a panel of 48 Jurors and plead not guilty.

This 12 day of October 1965

B Clarence Mayfield
Defendant's Attorney.

Fred Hand Jr.
Solicitor General.

No. 1229

SUPERIOR COURT
Mitchell County
April Term, 19 65

THE STATE
vs.
Leon (Lynn) Davis
Phil Whitus

Murder

True Bill
Brantley Coleman
Foreman.

FRED HAND, JR., Solicitor General
John M. Maples
Prosecutor.

SPECIAL PRESENTMENT

Received in Open Court from the sworn Grand Jury Bailiff, and filed in office this day of
19 APR 12 1965

Martha B. Hoggard Clerk.
CLERK SUPERIOR COURT

Martha B Hoggard

The Defendant, Phil Whitus having waived formal arraignment; waives copy Bill of Indictment, list of witnesses sworn before the Grand Jury, and agrees to strike from a panel of 48 Jurors and pleads not guilty.

This 19th day of October, 1965.

Walter Jones
Defendant's Attorney

Fred Hand Jr.
Solicitor General

We the Jury find the Defendant Leon (Lynn) DAVIS guilty.

This 18th day of October 1965

Hendrix Adams
Foreman.

We the Jury find the Defendant Phil Whitus guilty

This 19th day of October 1965

A B Neal
Foreman

[fol. 10] [File endorsement omitted]

IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

October Term, 1965

Case No. 1229

STATE OF GEORGIA

vs.

PHIL WHITUS

CHALLENGE TO THE ARRAY OF PETIT JURORS—Filed October 16, 1965

Your petitioner, PHIL WHITUS, files this his challenge to the array of Petit Jurors selected and now serving on the Petit Jury for the October Term of Superior Court of Mitchell County, Georgia, and shows as follows:

1

The Grand Jury for the April Term of Mitchell County Superior Court has indicted your petitioner for the crime of murder, and it is the intention of the Honorable Fred Hand, Jr., Solicitor General of Mitchell County Superior Court, to try your petitioner before the panel of Petit Jurors summoned for the October Term of the Mitchell County Superior Court.

2

Your petitioner shows that he is a member of the Negro race and has been accused by the State of Georgia of murdering a White farmer in Mitchell County, Georgia.

3

Your petitioner shows that the panel of jurors which will be cast upon your petitioner are illegally and unconstitutionally composed, and they have been drawn and summoned in derogation of the Due Process and Equal Pro-

[fol. 11] tection Clauses of the Fourteenth Amendment of

the Constitution of the United States; and is further in violation of Article One, Paragraphs One and Twenty-five of the Constitution of the State of Georgia of 1945.

4

Your petitioner further shows that the said panel of jurors is illegal and unconstitutional for the following reasons, to wit:

(a) Up until September of 1959 the Jury Commissioners of Mitchell County, Georgia, had not placed a name of any Negro in the jury box and on September of 1959, without revising the jury list, the Jury Commissioners deliberately placed the names of twenty-six Negroes in the jury box, said names being selected with the sole purpose of deliberately placing Negroes' names in the box to meet the constitutional requirements, and said names were not placed by the legal drawing of jurors in a revision of the jury lists as required by law.

(b) On the date of the filing of this challenge no Negro has ever served on a Petit Jury in Mitchell County, Georgia. According to the 1960 Census of Population, Volume 1, Characteristics of the Population, Part 12, Georgia, United States Department of Commerce, or more specifically, Table 27, as it applies to Mitchell County, there is a total population in the county, of persons over 21, 10,208, of which 5,726 are white and 4,480 are colored.

(c) The said panel of jurors which is now cast upon your petitioner contains at least 7 Negroes, but your petitioner [fol. 12] alleges that the revision of the jury list, made in February of 1965, was done solely and exclusively for the purpose of trying your petitioner and one Leon Davis; and said revision is not an honest attempt on the part of the Jury Commissioners to select a panel with no discrimination as to race, color or creed.

(d) Your petitioner contends and alleges that any system designed for the selection of Petit Juries wherein the mechanics of such system make discrimination by race, color or creed a possibility, then any jury selected under such system would of a necessity be unconstitutionally composed. Code Section 59-106 of the Georgia Code Annotated required the Jury Commissioners to select jurors from the

tax digests maintained by the tax receiver. Copy of Section 59-106 is attached hereto, marked Exhibit A, and made a part of this petition. Code Section 92-6307 of the Code of Georgia Annotated requires the tax receiver to maintain his records on a segregated basis, copy of Section 92-6307 attached hereto, marked Exhibit B, and made a part of this petition. Your petitioner further alleges that the tax records in Mitchell County, Georgia, prior to the year 1965, reflect that all returns of Negro tax payers are on yellow pages and all returns of White tax payers are on white pages. During the year 1965 the pages were identical in color, however, the returns of Negro tax payers were marked "colored." The Jury Commissioners, in their revision of the jury list in February 1965, used the tax digests of Mitchell County from which to select all of the Petit Jurors.

[fol. 13] (e) Your petitioner further alleges that under the law in force in the State of Georgia at the time of the filing of this petition the Jury Commissioners are required to select upright and intelligent men to serve as jurors and that this requirement establishes on its face and in its application a nonascertainable standard for jury selection and is void for vagueness.

(f) Your petitioner further alleges that the statutory process for the selection of the names of Petit Jurors and the manner in which said Petit Jurors in Mitchell County, Georgia, were selected has resulted in the systematic exclusion and inclusion of Negroes on the juries in Mitchell County, Georgia, all of which are in violation of the Due Process of Law and Equal Protection of Law clauses of the Fourteenth Amendment of the Constitution of the United States and the guarantees of Article III, Section 2, and the Fifth, Sixth and Seventh Amendments of said Constitution.

Wherefore, the said Phil Whitus prays that his challenge to the array be inquired into and that said array be quashed, and that the said Phil Whitus have such and other relief as will meet the ends of equity and justice.

This — day of October, 1965.

——, ——; Attorney for Petitioner.

P. O. Box 1115, Albany, Georgia.

[fol. 14] EXHIBIT A TO CHALLENGE TO THE ARRAY OF PETIT JURORS

of the proceedings and deliberations of the jury commissioners unless compelled to testify thereof in some court in this State. (Acts 1878-9, p. 28; 1882-3, p. 101.)

New trial: Failure of clerk to take and subscribe oath can be taken advantage of by challenge to array of grand jurors or by plea in abatement to undictment such question cannot be raised by motion for new trial. 152-229. —— (109 S. E. 664).

59-105. (1138 P. C.) Same; compensation of commissioners and clerk for revising jury lists.—Jury commissioners shal receive $2 each day for every day's service in revising the jury lists, to be paid from the county treasury. The clerk of the board shall receive $3 for each day's service, to be paid in like manner. (Acts 1878-9, p. 27; 1880-1, p. 124.)

Editorial Note.—This section was amended or modified by Acts 1921, p. 209, 1922, p. 132, 1925, p. 216, 1947, p. 146, 1927, p. 222, 1929, p. 182, and 1929, p. 277, as it relates to certain counties. These amendments have not been codified because of the limitations upon the number of counties in which they apply. Some of them probably violate Const., Art. I, Sec. IV. Par. 1 (§ 2-401), prohibiting the enactment of a special law in any case for which provision has been made by an existing general law. On this question, see 103-701 (30 S. E. 627); 135/269 (69 S. E. 182); 139/117 (76 S. E. 747); 146/576 (91 S. E. 671); 150/583 (104 S. E. 418). The 1921 Act prescribed a fee of $10 a day for jury commissioners for revising the jury list in counties having a population of 200,000 or more. The 1922 Act reduced this fee to $6 a day. Acts 1925, p. 216, prescribed $5 a day as the compensation for each of the jury commissioners and their clerks for revising the jury list in counties "having a population according to the United States census of 1920 of not less than 39,837 and not more than 39,845." Acts 1927, p. 146, made the same provision as to counties "having a popu-

lation, according to the United States census of 1920 of not less than 33,000 and not more than 33,050." Acts 1927, p. 222, prescribed $10 a day for jury commissioners and their clerks in revising jury lists in counties having a population according to the United States census of 1920 or any future census, of 200,000 or more. Acts 1929, p. 182, prescribed $5 a day instead of $2 as the compensation for jury commissioners and their clerks in counties "having a population, according to the United States census of 1920, of not less than 26,108 and not more than 26,110." Acts 1929, p. 277, made the same provision as to counties "having a population according to the United States census of 1920 of not less than 18,355 and not more than 18,365."

59-106. (816, 819 P. C.) Revision of jury lists. Selection of grand and traverse jurors.—Biennially, or, if the judge of the superior court shall direct, triennially on the first Monday in August, or within 30 days thereafter, the board of jury commissioners shall revise the jury lists.

The jury commissioners shall select from the books of the tax receiver upright and intelligent men to serve as jurors, and shall write the names of the persons so selected on tickets. They shall select from these a sufficient number, not exceeding two-fifths of the whole number, of the most experienced, intelligent, and upright men to serve as grand jurors whose names they shall write upon other tickets. The entire number first selected, including those afterwards selected as grand jurors, shall constitute the body of traverse jurors for the county, to be drawn for service as provided by law, except that when in drawing juries a name which has already been drawn for the same term as a grand juror shall be drawn as a traverse juror, such name shall be returned to the box and another drawn in its stead. (Acts 1878-9, pp. 27, 34; 1887, p. 31; 1892, p. 61; 1899, p. 44.)

[fol. 15] EXHIBIT B TO CHALLENGE TO THE ARRAY OF PETIT JURORS

copy of the revised and corrected digest to the State Revenue Commissioner, one to the ordinary or other authority having charge of county affairs, and one to the tax collector. (Acts 1851-52, p. 291; 1913, p. 123.)

Cross-references.—When time shall be granted to receivers and collectors, see § 92-7108. Penalty for receivers failing to complete digest, see § 92-5401.

Cited. 152-266 (1-a), (109 S. E. 654).

Evidence: Digests are on trial of an issue as to payment of taxes, 47/90; See 3 App. 206 (1) (59 S. E. 718).

92-6304. (1094) Form and size of digests: binding and labeling.—The receivers of tax returns in making the digests shall conform to the forms furnished and each digest shall be of uniform size, and when returned shall be bound and labeled. (Acts 1845, Cobb. 1076. Acts 1913, p. 123.)

Cited. 152/266 (1-a) (109 S. E. 654).

92-6305. (1095). Returns, how entered in digests.—Land and interests in land, together with the returns of personal estate and other interests the subject of taxation, shall be returned and set down in the digest in separate columns according to the classification furnished the receivers by the State Revenue Commissioner in each year, and their aggregate value extended. (Acts 1851-52, p. 290.)

Cross-reference.—Penalty for receiver's failing to make a proper digest, see § 92-5402.

92-6306. (1085) Names to be entered on digests in full.—Receivers of tax returns shall enter on their digests the first name in full of all taxpayers. (Acts 1876, p. 15.)

Cross-reference.—Penalty for incomplete or improper digest, see §§ 92-5401 to 92-5403.

92-6307. (1086) Entry on digest of names of colored persons.—The tax receivers shall place the names of the colored taxpayers, in each militia district of the county, upon the tax digest in alphabetical order. Names of colored and white taxpayers shall be made out separately on the tax digest. (Acts 1894, p. 31.)

Editorial Note.—Acts 1935, p. 476, requires the tax receivers in all counties in this State having a population of 200,000 or more by the United States census of 1930, or any future United States census, to list in the white, and colored tax digests respectively the names of the taxpayers in continuous, alphabetical order without segregation by militia districts or other local subdivisions except independent school districts.

Acts 1937-38, Extra Sess., p. 185 provides that the tax receivers of all counties having population of not less than 70,000 nor more than 100,000, by the census of 1930, or any future census, are required to list in the white and colored digests, respectively, the names of the taxpayers in continuous alphabetical order according to the names of the taxpayers, without segregation by militia districts or other local subdivisions.

92-6308. (1116) Returns by receivers and collectors of taxes paid by colored people. The several receivers of tax returns and tax collectors in this State, or other officers performing similar duties, shall make a report to the State Revenue Commissioner of the character and amount

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[fol. 16] *Duly sworn to by Phil Whitus jurat omitted in printing.*

[fol. 17] IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

Number 1229

STATE OF GEORGIA,

vs.

PHIL WHITUS

SENTENCE—Filed October 19, 1965

The jury having returned a verdict of guilty, without a recommendation of mercy, it is considered, ordered and adjudged by the court that the defendant, PHIL WHITUS, be taken from the bar of this court to the common jail of Mitchell County, Georgia, to be held there until the sheriff of said County and his lawful deputy and a sufficient guard shall in the manner and within the time prescribed by law, take the defendant PHIL WHITUS, to the penitentiary of this State, where, it is ordered, that within the walls of said penitentiary, that the defendant on the 10th day of December, 1965 be put to death by electrocution as provided by law.

There shall be present at such execution the Warden of the penitentiary, who shall serve as executioner, and at least two assistants, two physicians to determine when death supervenes, an electrician, a suitable guard, and if the condemned person so desires, his counsel, relatives and such clergymen and friends as he may request.

PHIL WHITUS, may God have mercy on your soul.

In open court, this October 19, 1965.

Carl E. Crow, Judge Superior Court, South Georgia Judicial Circuit.

[File endorsement omitted.]

[fol. 18] CLERK'S CERTIFICATE

I, Martha B. Hoggard, Clerk Superior Court, Mitchell County, Georgia, do hereby certify that the Notice of Appeal and the Amendment thereto contained herein is the original Notice of Appeal and Amendment filed in this office, and that the other items contained herein are true and complete copies of their originals.

I further certify that the defendant is confined in jail pending appeal.

WITNESS my hand and the seal of this office, this 19 day of January, 1966.

Martha B. Haggard, Clerk Superior Court, Mitchell County, Georgia.

[Seal.]

[fols. 19-20] IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

Number 1229

THE STATE,

vs.

PHIL WHITUS

INDICTMENT FOR MURDER

Transcript of Hearing on Challenge to the Array of Petit Jurors

Before his honor, CARL E. CROW, October 16, 1965.

APPEARANCES:

Fred Hand, Jr., Solicitor General, South Georgia Judicial Circuit, Pelham, Georgia, For the State.

P. W. Jones, Attorney at Law, Albany, Georgia, For the Defendant.

[File endorsement omitted.]

[fol. 21] STIPULATION

P. W. Jones: In the case of Phil Whitus vs. The State of Georgia, according to the best recollection of the clerk there were 90 jurors summoned, 4 white jurors were excused, and there were 7 Negroes on the panel of jurors, but there could possibly be more.

Solicitor Hand: And that there is no designation of race indicated on the official list of jurors; and that the clerk makes the statement regarding the 7 Negro jurors thru her personally knowing these individuals and on no other basis.

P. W. Jones: Mr. Hand and I have agreed to excuse Mr. Robert Culpepper and in lieu of his testimony we have stipulated that his testimony on a former hearing on the challenge to the array of grand and petit jurors shall be used in lieu thereof.

Solicitor Hand: Only so far as it relates to the petit jury.

Reporter: Shall I pick out the pertinent questions?

P. W. Jones: Mr. Hand and I will pick out the questions.

Solicitor Hand: And in case of a disagreement, the court will make the final determination.

I would like for the record to reflect that the defendant, Phil Whitus, is in open court and has been from the inception of all these stipulations and agreements, and that he is represented by his counsel, P. Walter Jones.

P. W. Jones: I acknowledge that my client is present and fully cognizant of what is going on, and is represented by me. Your honor, I have subpoenaed Mr. Campbell, [fol. 22] who is a little older than I am, to bring two of his books, and I would like for someone to go down and bring those books up. While we are waiting on Mr. Campbell, I explained to Mr. Hand that I inadvertently left the 1960 United States Census at my house and he has agreed that the same testimony introduced at the last term of court, and which this court can take judicial cognizance of, could be entered, subject to my filing the book in the clerk's office no later than next week.

Solicitor Hand: Provided that the evidence you intend to substantiate this with is properly authenticated as required by Georgia law and the rules of evidence.

P. W. Jones: Your honor, we do not plan to properly au-

thenticate it. We only plan to introduce the book as it is, and I believe the last decision of the Court of Appeals affirmed your honor's decision and said nothing about authentication. It merely said the court could take judicial cognizance of the 1960 census. This census, which I plan to file with the clerk's office, shows that there are in Mitchell County over the age of 21, 10,206 people, of which 5,726 are white and 4,480 are colored.

Solicitor Hand: Do you agree that in the event you do not bring forth this evidence from which you have read, it will be stricken from the record?

P. W. Jones: It can be stricken from the record if I do not file the book next week. Barring sickness, I will.

[fol. 23] W. H. CAMPBELL, SWORN.

Direct examination.

By: P. W. Jones:

Q. State your name and position, Mr. Campbell.

A. W. H. Campbell, Tax Receiver.

Q. Mr. Campbell, prior to the year 1965, you were in control of the tax digest for Mitchell County, Georgia?

A. Yes sir.

Q. You had two classes of taxpayers, colored and white?

A. Yes.

Q. Did the white taxpayers make their returns on white sheets?

A. Yes.

Q. And did the colored taxpayers make their returns on yellow sheets?

A. Yes sir.

Q. And that has been the practice of your office operating under a State law——

Solicitor Hand: Your Honor, I object to this line of questioning. It would appear to me that the sole issue involved here today to be considered by this court and any future courts is whether or not the petit jury which is cast upon the defendant in this case has been constitutionally selected, and whether the tax list from which this petit jury by law was drawn is of a constitutional nature. What has gone on in years gone by would apparently be irrelevant.

P. W. Jones: If your Honor please, I intend to show [fol. 24] by tax commissioner Grogan that they used the 1964 tax digest, and one of the allegations in our petition is that under the existing laws in the State of Georgia, and according to recent decisions of the Supreme Court of the United States that if Mr. Campbell follows the letter of the law he cannot select a constitutional jury, because he has sworn to maintain the tax digest on a segregated basis. The tax list that we are concerned with now was taken from his 1964 records and was drawn in February 1965, and therefore, the 1964 records would of a certainty be admissible in this hearing.

Solicitor Hand: Your Honor, as a matter of procedure,

would it not be more appropriate if Mr. Jones would first lay the foundation for this challenge by putting the jury commissioner on the stand to determine what they did in fact do.

The Court: I will let him do it anyway he wants to.

Q. Mr. Campbell, prior to 1965 the negro taxpayers were kept on yellow sheets?

A. Yes sir.

Q. And the white taxpayers were kept on white sheets?

A. Yes.

Q. Were you under instructions from any State official to maintain your records that way?

A. Well, I guess that's the way they always had done it.

[fol. 25] Cross-examination.

By Solicitor Hand:

Q. Mr. Campbell, you don't know what procedure the jury commissioners used in selecting any jurors for Mitchell County, do you?

A. No.

P. W. Jones: I would like to call Mr. Grogan to the stand.

Mr. Grogan, Sworn

Direct examination.

By P. W. Jones:

Q. Mr. Grogan, are you a tax commissioner?

A. No.

Q. Are you a jury commissioner?

A. Yes sir.

Q. How many jury commissioners are there in this county?

A. Six, I think.

Q. You have met with those six jury commissioners?

A. Yes sir.

Q. Are all of those jury commissioners white people?

A. Yes.

A. Yes.

Q. Now, Mr. Grogan, when did y'all revise the jury list?

A. February of this year.

Q. February of this year?

A. Yes sir.

[fol. 26] Q. What records, if any, did you use in revising that list?

A. Well, we used the tax digest.

Q. You used the tax digest. The one maintained by Mr. Campbell?

A. Yes sir.

Q. The law enforces upon you, Mr. Grogan, the duty of selecting the most intelligent and upright citizens. How did you accomplish that duty imposed upon you by law?

A. Well, we selected the ones from our communities, each individual community, the ones that we knew personally.

Q. The ones you personally knew? You didn't give any taxpayers any intelligence tests, did you?

A. No.

Q. You didn't call them in to talk to them?

A. No.

Q. Did you attempt to get their record, if they had any criminal record?

A. No, we didn't.

Q. What community do you reside in the county?

A. Pebble City.

Q. You were familiar with the residents of Pebble City?

A. Yes sir.

Q. And the adjacent farms?

A. Yes.

Q. Now, Mr. Grogan, you of necessity know more white taxpayers than you do colored taxpayers, do you not?

A. Yes, I do in that community.

Q. And the jurors from the Pebble City Community were more or less left up to your discretion?

A. Yes.

[fol. 27] Cross-examination.

By Solicitor Hand:

Q. Mr. Grogan, at the time the jury commissioners met in February of this year, was it your intention to revise this list in view of a case that the Judge brought to your attention?

A. He advised us to revise the jury list.

Q. In doing so did you purposely include or exclude anyone on the revised jury list because of their race, creed, or national origin?

A. No.

Q. Did you personally practice any discrimination because of anyone's race, creed or national origin?

A. We didn't.

Q. You didn't revise this jury list for the sole and exclusive purpose that the State might try Phil Whitus, did you?

A. No, I did not.

Q. Did you, if in fact the tax list of Mitchell County, Georgia, was segregated, allow this to effect your decision in anyway as to whether or not you would take a prospective man as a prospective juror?

A. No.

Q. Did you purposely include or exclude anyone from a segregated tax digest, if in fact there was a segregated tax digest?

A. No.

Q. In relation to the standards which you applied in selecting the most intelligent and upright jurors for prospec-
[fol. 28] tive jury duty, I believe you testified that you tried to abide by the Georgia law in selecting the most intelligent and upright citizens in the community, and you did it on the basis of personal knowledge of the individuals. Is that correct?

A. That's correct.

Q. Although you might personally know, for example, Joe Doe from Pebble City, would your recommendations in relation to this juror be final, or would the entire jury commission pass on each individual prospective juror?

A. The entire commission passed on each individual juror.

Q. In other words, you would only make the recommendation as to whether an individual would be qualified?

A. That's right.

Q. Mr. Grogan, I ask you a further question—in examining the prior tax digest, that is prior to 1964, did you determine whether or not the number of negroes making tax returns was as great or nearly as great as white people making tax returns in Mitchell City?

A. In the book we had it wasn't as big a list.

Q. What percentage—in years gone by what would you say the percentage of negro tax returns was to the overall tax return?

A. It would be about thirty per cent, I guess.

Q. That would be your guess.

P. W. Jones: I object to years gone by. I have no objection to 1964, because he testified the jury list was made up from the 1964 tax digest, and I think only that tax digest is admissible here.

[fol. 29] The Court: I will let it go in.

P. W. Jones: Your Honor, I have two questions to ask and I talked with Mr. Hand the other night and will probably require Mr. Grogan to refer to his volume report, and if Mr. Hand has no objection I would like to ask these questions and have Mr. Grogan report his answers at a later date. I would like to inquire of Mr. Grogan how many jurors are on the jury list and how many of those jurors are colored.

Solicitor Hand: Your Honor, I submit that the witness can answer to his own personal knowledge.

Redirect examination.

By: P. W. Jones:

Q. Of your own personal knowledge, without examining those records, Mr. Grogan, can you tell me approximately how many jurors are on the list?

A. On the list now?

Q. Yes.

A. There's around six hundred.

Q. I'll ask you of your own personal knowledge approximately how many of those jurors are colored?

A. I'm afraid I couldn't.

P. W. Jones: Would you allow him to go get this information, rather than continue this hearing?

Solicitor Hand: Your Honor, I think one further question might clarify counsel's request.

[fol. 30] Recross-examination.

By Solicitor Hand:

Q. Mr. Grogan, the list that y'all composed of all jurors in Mitchell County, does it have any designation of race on that list?

A. After we had completed it, it didn't have any.

Q. It had no designation of race?

A. No.

Q. Therefore, you would be unable to determine who was a negro and who was not a negro from that list, unless you just happened to personally know them. Is that true?

A. That's true.

Solicitor Hand: I would submit, your Honor, that it is impossible for Mr. Grogan to furnish this information.

Redirect examination.

By: P. W. Jones:

Q. Mr. Grogan, you said after it was completed. While it was being accomplished or making up the list, did you have a designation showing which ones were negroes?

A. Well, we knew which was a negro and which wasn't when we recommended him.

Q. All of the recommendations of the various jury commissioners were acted upon favorably, were they not?

A. Yes sir.

Q. So at the time you were making up the list you knew how many jurors there were and how many of those jurors were negroes, and do you have that information?

[fol. 31] A. We didn't tally them that way.

Q. Would you have any approximate idea when the recommendations were made at that time as to how many were negroes?

A. I'd have to guess at it.

Q. Well, would you give us a reasonable guess?
A. Twenty five or thirty per cent, I guess.

Recross-examination.

By: Solicitor Hand:

Q. Mr. Grogan, is this just a wild guess by you?
A. Yes sir.
Q. Could it be as high as eighty per cent or sixty per cent?
A. Well, it could possibly be different.
Q. You just don't really know, do you?
A. I don't know.
Q. You don't know really what the percentage is, do you?
A. No, I'm not sure.

Redirect examination.

By: P. W. Jones:

Q. But to your best knowledge it was twenty five or thirty per cent?
A. Well, just guessing at it, that's right.

Recross-examination.

By: Solicitor Hand:

Q. And you could just as well guess there could be as many as forty or fifty per cent?
A. Well, I could, yes sir.

[fol. 32] Redirect examination.

By: P. W. Jones:

Q. When I first asked you the question, Mr. Grogan, if you had sincerely thought there were fifty per cent, you would have said so, wouldn't you?
A. Well, if I had thought that, I would, but this is just a guess.
Q. In other words, your reasonable guess and as a member of the jury commission, there was only twenty five or thirty per cent?

A. I guess so.

P. W. Jones: Your honor, subject to the introduction of the 1960 United States Census records, we rest.

Plaintiff Rests

Recross-examination.

By: Solicitor Hand:

Q. Mr. Grogan, did you as jury commissioner participate in selecting twenty six negroes in the jury box?

A. The ones present in the box?

Q. Yes. Did you purposely put twenty six in there?

A. Not purposely, no.

[fol. 33] P. W. Jones: Your honor, may I reopen my case for brief testimony on my behalf?

The Court: All right.

P. W. Jones, Sworn.

Statement by P. W. Jones.

My name is P. Walter Jones, Attorney at Law, in Albany, Georgia, and I would like to testify what I consider an admission in judiciary. I was present at a habeas corpus hearing in Brunswick, Georgia, where Honorable Maston O'Neal introduced an affidavit, in which——

Solicitor Hand: Your Honor, I object——

The Court: Let's see what it is.

P. W. Jones (continuing):

an affidavit in which the affidavit said that Mr. Burson, who is head of the Jury Commissioners,—Mr. Burson gave an affidavit to the effect that in November of 1959 he had revised the jury list and the names of 26 negroes were included. That was done in open court and was part of the court record, which I believe is an admission in judicio and of which this court can take judicial notice.

Solicitor Hand: Your Honor, I object to this testimony. The evidence shows the commissioners revised the list in 1965.

P. W. Jones: February 1965, and I put that in only because Mr. Hand asked a question about it.

Cross-examination.

By: Solicitor Hand:

Q. Mr. Jones, you don't mean to imply to the Court that this has anything to do with the present petit jury, do you? [fol. 34] A. No sir.

Q. You don't mean to imply that sub-paragraph (a) of paragraph 4 of your petition has anything at all to do with the present—

A. That I will not admit, Mr. Hand, but I will admit that the jury list I am referring to now, which we are challenging, is not the jury list which will be cast upon this defendant. If you will withdraw the question about the 26 jurors, I will withdraw this.

Q. It is in your petition, so I can't. I will be glad to if you will strike paragraph 4 of your petition in its entirety.

Reporter: Has the judge ruled on the objection to the testimony?

P. W. Jones: We are going to let my testimony stand. The judge has ruled that it is not admissible.

Q. You don't have any personal knowledge that the revision of the jury list of Mitchell County, Georgia, made in February of 1965 was done solely and exclusively for the purpose of trying Phil Whitus do you?

A. I do not.

Q. You do not have any information to reveal to the Court that this was not an honest attempt on the part of the jury commissioners to select a panel in which no discrimination as to race, color or creed was performed, do you?

A. I cannot answer that question, Mr. Hand.

Q. In sub-paragraph (c) of paragraph 4 of your petition [fol. 35] you allege in part, "and said revision is not an honest attempt on the part of the jury commissioners to select a panel with no discrimination as to race, color or creed." My question is as follows: Do you have anything

to substantiate an implication that this was not an attempt on the part of the jury commissioners?

A. Only from the evidence submitted this morning.

Q. That is the only evidence you have?

A. Yes sir.

Plaintiff Rests

W. A. Cain, Sworn.

Direct examination.

By: Solicitor Hand.

Q. State your name, please.

A. W. A. Cain.

Q. Are you a jury commissioner of Mitchell County, Georgia?

A. I am.

Q. Were you present when the jury list was revised in February 1965?

A. I was.

Q. Will you relate to the Court the procedure you gentlemen used in revising this list, please?

A. First I believe we went thru the existing jury list, striking off the deceased and the ones who had moved away. Then we took the 1964 tax digest and went thru it with each individual commissioner making recommendations from [fol. 36] his home locality, and each selection being passed on by all commissioners and each commissioner being given a chance to object to each recommendation.

Q. Then did the jury commission as a whole pass on each individual prospective juror?

A. That's correct.

Q. If in fact there is some designation on the 1964 tax digest for this county of race, did this or did it not effect your selection of any prospective juror?

A. It did not.

Q. Did you or any other member of the jury commission, to your personal observation and knowledge, practice any discrimination in regard to race, color, creed or national

origin in selecting any prospective juror for the present jury panel?

A. No sir.

Q. Do you have any idea of your own how many negroes are in the jury box of Mitchell County at this time?

A. I do not.

Q. Do you have any idea what percentage of tax returns are made by negroes on the Mitchell County Digest?

A. I do not.

Q. Do you know how many jurors are in the jury box in Mitchell County?

A. If I remember right somewhere between 500 and 600, in the upper 500's. It's in the vicinity of 600, total, I believe.

Q. In the selection of prospective jurors did the jury commissioners try to use the guideline the most intelligent and upright citizens they personally knew?

[fol. 37] A. In my case we did, and I suppose that the other commissioners did.

Cross-examination.

By: P. W. Jones:

Q. You said between 500 and 600. Was that your total jury list?

A. I think that's right.

Q. That does not represent the number of negroes?

A. That represents the total list.

Q. You were using the Tax Digest, were you not?

A. Yes, sir.

Q. The negro taxpayer returned theirs on yellow sheets?

A. We did not use the tax returns. We used the Tax Digest.

Q. On the Tax Digest they are marked "colored" and "white" are they not, or are they kept in separate sections?

A. Correct.

Q. The law casts upon you the duty to select the most intelligent and upright citizens. How do you proceed to do that? Did you give tests of their intelligence?

A. No sir, we did not.

Q. Did you check criminal records?

A. No sir.

Q. It was done, more or less, by knowledge of the jury commissioners?

A. Yes sir.

Q. All of the jury commissioners are white, are they not?

A. Yes sir.

Q. And each jury commissioner would take his section of the county and make his recommendations to the jury [fol. 38] commission as a whole, and those recommendations were followed?

A. In most cases. I don't know of a deviation, but it's possible there could have been.

Redirect examination.

By Solicitor Hand:

Q. The jury list that the commissioners ultimately composed, did it have any designation of race on it?

A. It does not.

Solicitor Hand: The state rests.

P. W. Jones: We close, subject to my tendering into court the 1960 United States census record.

Solicitor Hand: The state closes.

The Court: The court overrules the motion and the case will be taken up next week.

STIPULATION—October 19, 1965

[fol. 39] It is stipulated and agreed between the state of Georgia and P. Walter Jones, attorney for Phil Whitus, that a document has been brought into court, which is labeled as follows: the eighteenth decennial census of the United States, census of population: 1960, volume 1, characteristics of the population, number of inhabitants, general population characteristics, general social and economic characteristics, and detailed characteristics, part 12 Georgia, prepared under the supervision of Howard G. Brunsman, chief, population division, U. S. Department of Commerce, Luther H. Hodges, Secretary, Bureau of the Census, Richard M. Scammon, director (from May 1, 1961), Robert W. Burgess, director (to March 4, 1961).

And the State of Georgia renews the objection to the introduction of this evidence on the ground that the same has not been properly authenticated.

It is further stipulated that the only pertinent portion of this book is found on page 12-123, and that a photostatic copy of said page and the frontispiece will suffice.

[fol. 40] The Eighteenth Decennial Census of the United States

Census of Population: 1960

Volume I

CHARACTERISTICS OF THE POPULATION

Number of Inhabitants, General Population Characteristics, General Social and Economic Characteristics, and Detailed Characteristics

Part 12

GEORGIA

Prepared under the supervision of HOWARD G. BRUNSMAN, *Chief, Population Division*

U.S. DEPARTMENT OF COMMERCE
LUTHER H. HODGES, *Secretary*

BUREAU OF THE CENSUS

RICHARD M. SCAMMON, *Director* (from May 1, 1961)
ROBERT W. BURGESS, *Director* (to March 3, 1961)

[fol. 41]

Table 27.—AGE BY COLOR AND SEX, FOR COUNTIES: 1960—Con.

[Median not shown where base is less than 100]

AGE	1960 POPULATION							1950 POPULATION, TOTAL
	ALL CLASSES			WHITE		NONWHITE		
	TOTAL	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	
	MITCHELL							
ALL AGES	19 652	9 393	10 259	4 664	4 967	4 729	5 292	22 528
UNDER 1 YEAR	517	248	269	83	90	165	179	626
1 YEAR	466	246	220	95	88	151	132	1 256
2 YEARS	515	270	245	93	79	175	166	
3 YEARS	492	240	252	83	92	157	160	1 273
4 YEARS	486	257	229	92	85	165	144	
5 YEARS	532	272	260	106	93	166	167	567
6 YEARS	480	237	243	95	104	142	139	566
7 YEARS	507	257	250	108	97	149	153	
8 YEARS	467	234	233	101	95	133	138	1 675
9 YEARS	486	227	259	88	95	139	164	
10 YEARS	497	269	228	108	99	161	129	
11 YEARS	483	231	252	110	102	121	150	2 020
12 YEARS	508	232	276	114	119	118	157	
13 YEARS	506	256	250	115	125	141	125	
14 YEARS	396	193	203	97	95	98	106	489
15 YEARS	445	208	237	92	119	116	118	438
16 YEARS	427	213	214	114	107	99	107	873
17 YEARS	416	204	212	100	96	104	116	
18 YEARS	316	166	150	69	68	97	82	791
19 YEARS	274	120	154	52	51	68	103	
20 YEARS	230	105	125	41	44	60	81	346
21 AND OVER	10 206	4 706	5 500	2 702	3 024	2 004	2 476	11 648
UNDER 5 YEARS	2 476	1 261	1 215	448	434	813	781	3 155
5 TO 9 YEARS	2 472	1 227	1 245	498	484	729	761	2 808
10 TO 14 YEARS	2 390	1 183	1 207	544	540	639	667	2 509
15 TO 19 YEARS	1 878	911	967	627	661	484	526	2 062
20 TO 24 YEARS	1 070	511	559	232	231	279	328	1 651
25 TO 29 YEARS	940	441	539	230	269	211	270	1 467
30 TO 34 YEARS	1 002	461	541	242	270	219	271	1 408
35 TO 39 YEARS	1 055	488	567	298	312	190	255	1 496
40 TO 44 YEARS	1 119	506	613	292	357	214	256	1 282
45 TO 49 YEARS	1 135	551	584	340	326	211	258	1 044
50 TO 54 YEARS	967	451	516	286	314	165	202	892
55 TO 59 YEARS	784	367	417	220	236	147	181	731
60 TO 64 YEARS	673	308	365	191	208	117	157	632
65 TO 69 YEARS	616	266	350	145	192	121	158	578
70 TO 74 YEARS	493	227	266	134	165	93	101	387
75 TO 79 YEARS	293	127	166	76	106	51	60	365
80 TO 84 YEARS	149	65	84	41	50	24	34	
85 AND OVER	100	42	58	20	32	22	26	61
UNDER 18 YEARS	8 626	4 296	4 330	1 796	1 780	2 500	2 550	9 783
65 AND OVER	1 651	727	924	416	545	311	379	1 391
MEDIAN AGE	22.9	21.1	24.4	29.0	31.6	16.9	19.2	22.2
	MONTGOMERY							
ALL AGES	6 284	3 159	3 125	1 687	1 847	1 272	1 278	7 901
UNDER 1 YEAR	149	73	75	33	33	40	42	199
1 YEAR	135	69	66	31	26	38	40	399
2 YEARS	126	75	51	28	11	47	40	
3 YEARS	131	78	53	36	24	42	29	394
4 YEARS	141	71	70	31	24	40	46	
5 YEARS	142	69	73	31	35	38	38	205
6 YEARS	122	66	56	39	24	27	32	176
7 YEARS	136	66	70	32	37	34	33	
8 YEARS	137	76	61	34	25	42	36	553
9 YEARS	136	65	71	36	30	29	41	
10 YEARS	145	72	73	32	44	40	29	
11 YEARS	131	60	71	35	30	25	41	743
12 YEARS	150	71	79	44	42	27	37	
13 YEARS	137	72	65	33	46	39	19	
14 YEARS	140	75	65	45	32	30	33	180
15 YEARS	156	77	79	40	40	37	39	186
16 YEARS	123	69	54	40	28	29	26	347
17 YEARS	140	65	75	40	43	25	32	
18 YEARS	136	67	69	46	39	21	30	275
19 YEARS	137	66	71	47	47	19	24	
20 YEARS	102	57	45	40	30	17	15	95
21 AND OVER	3 433	1 700	1 733	1 114	1 157	586	576	4 149
UNDER 5 YEARS	681	346	335	159	118	207	197	992
5 TO 9 YEARS	673	342	331	172	151	170	180	934
10 TO 14 YEARS	703	350	353	189	194	161	159	923
15 TO 19 YEARS	692	344	348	213	197	131	151	808
20 TO 24 YEARS	414	224	190	135	111	89	79	487
25 TO 29 YEARS	298	160	138	90	83	70	55	495
30 TO 34 YEARS	279	156	123	90	71	66	52	495
35 TO 39 YEARS	305	148	157	105	112	43	45	569
40 TO 44 YEARS	389	190	199	121	140	69	59	617
45 TO 49 YEARS	435	193	242	139	157	54	85	559
50 TO 54 YEARS	332	174	158	118	112	56	46	515
55 TO 59 YEARS	278	144	134	103	97	41	37	272
60 TO 64 YEARS	229	104	125	69	82	35	43	224
65 TO 69 YEARS	203	91	112	59	85	32	27	243
70 TO 74 YEARS	162	72	90	55	61	17	29	156
75 TO 79 YEARS	118	51	67	36	47	15	20	162
80 TO 84 YEARS	51	26	25	20	19	6	6	
85 AND OVER	42	24	18	14	10	10	8	30
UNDER 18 YEARS	3 476	1 769	1 707	840	874	929	833	3 382
65 AND OVER	576	244	332	184	222	80	90	591
MEDIAN AGE	26.7	24.9	28.9	29.2	34.9	18.7	18.4	23.0

AGE	1960 POPULATION							1950 POPULATION, TOTAL
	ALL CLASSES			WHITE		NONWHITE		
	TOTAL	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	
	MONROE							
ALL AGES	10 495	4 897	5 598	2 480	2 935	2 417	2 663	10 523
UNDER 1 YEAR	247	123	124	31	42	92	82	232
1 YEAR	224	114	110	52	37	62	73	515
2 YEARS	249	108	141	47	56	61	87	
3 YEARS	232	107	125	52	48	55	77	513
4 YEARS	218	97	121	37	48	60	73	
5 YEARS	256	121	135	58	53	63	82	224
6 YEARS	243	124	119	54	48	70	71	235
7 YEARS	264	132	132	56	51	76	81	
8 YEARS	247	115	132	52	60	63	72	646
9 YEARS	244	119	125	50	54	69	71	
10 YEARS	256	122	134	57	52	65	82	
11 YEARS	246	125	121	48	49	77	72	911
12 YEARS	227	111	116	52	47	59	69	
13 YEARS	236	113	123	64	67	49	56	
14 YEARS	235	135	100	62	43	73	57	204
15 YEARS	192	97	95	50	43	47	52	216
16 YEARS	211	100	111	42	48	58	63	466
17 YEARS	209	96	113	42	58	54	55	
18 YEARS	223	72	151	23	114	49	37	423
19 YEARS	231	80	151	36	112	44	39	
20 YEARS	200	81	119	34	75	47	44	189
21 AND OVER	5 605	2 605	3 000	1 461	1 732	1 124	1 268	5 729
UNDER 5 YEARS	1 170	549	621	219	229	330	392	1 280
5 TO 9 YEARS	1 254	611	643	270	266	341	377	1 109
10 TO 14 YEARS	1 200	606	594	283	258	323	336	1 115
15 TO 19 YEARS	1 066	445	621	193	375	252	246	1 105
20 TO 24 YEARS	709	302	407	128	228	174	179	822
25 TO 29 YEARS	553	267	286	123	128	144	158	682
30 TO 34 YEARS	566	262	304	134	169	128	135	663
35 TO 39 YEARS	581	275	306	130	160	125	146	644
40 TO 44 YEARS	596	299	297	169	173	130	124	549
45 TO 49 YEARS	547	249	298	147	171	102	127	466
50 TO 54 YEARS	523	246	277	155	175	91	102	479
55 TO 59 YEARS	440	207	233	137	156	70	77	401
60 TO 64 YEARS	347	160	187	110	118	50	69	319
65 TO 69 YEARS	338	158	180	93	106	65	74	352
70 TO 74 YEARS	266	112	154	67	87	45	67	227
75 TO 79 YEARS	186	84	102	60	78	24	24	233
80 TO 84 YEARS	90	40	50	30	32	10	18	
85 AND OVER	63	25	38	12	26	13	12	41
UNDER 18 YEARS	4 236	2 059	2 177	906	982	1 153	1 275	4 182
65 AND OVER	943	419	524	262	329	157	195	853
MEDIAN AGE	23.9	23.9	23.9	30.9	29.4	19.3	19.6	24.0
	MORGAN							
ALL AGES	10 280	4 960	5 320	2 613	2 747	2 347	2 573	11 899
UNDER 1 YEAR	270	139	131	53	60	86	71	315
1 YEAR	245	120	125	49	61	71	64	614
2 YEARS	226	122	104	49	45	73	59	
3 YEARS	280	148	132	68	52	80	80	660
4 YEARS	239	118	121	56	47	62	74	
5 YEARS	247	112	135	42	61	70	74	313
6 YEARS	243	125	118	48	54	77	64	284
7 YEARS	251	135	116	65	50	70	66	
8 YEARS	232	115	117	50	56	65	61	871
9 YEARS	243	119	124	50	57	69	67	
10 YEARS	248	124	124	61	47	63	77	
11 YEARS	243	135	108	58	48	77	63	1 097
12 YEARS	266	153	113	78	46	79	67	
13 YEARS	257	136	121	69	52	67	69	
14 YEARS	236	102	134	50	51	52	83	253
15 YEARS	229	123	106	62	43	61	63	248
16 YEARS	202	94	108	41	53	53	55	411
17 YEARS	239	107	132	53	67	54	65	
18 YEARS	147	76	71	36	33	40	38	357
19 YEARS	130	74	56	35	22	39	34	
20 YEARS	133	79	54	36	25	43	29	154
21 AND OVER	5 474	2 504	2 970	1 508	1 720	996	1 250	6 320
UNDER 5 YEARS	1 260	647	613	275	265	372	348	1 589
5 TO 9 YEARS	1 216	606	610	255	278	351	332	1 470
10 TO 14 YEARS	1 250	650	600	312	241	338	359	1 350
15 TO 19 YEARS	947	474	473	227	218	247	255	1 016
20 TO 24 YEARS	563	283	280	138	139	145	141	710
25 TO 29 YEARS	490	214	276	136	154	78	122	788
30 TO 34 YEARS	473	236	237	145	133	91	104	744
35 TO 39 YEARS	576	280	296	166	165	114	131	736
40 TO 44 YEARS	551	248	303	157	179	91	124	628
45 TO 49 YEARS	599	284	315	160	178	124	143	557
50 TO 54 YEARS	498	248	250	143	149	105	101	521
55 TO 59 YEARS	426	187	239	118	137	69	102	455
60 TO 64 YEARS	392	177	215	129	142	48	73	393
65 TO 69 YEARS	395	166	229	98	138	68	91	404
70 TO 74 YEARS	301	128	173	78	112	50	61	275
75 TO 79 YEARS	194	81	113	46	62	35	51	237
80 TO 84 YEARS	90	35	55	20	41	15	14	
85 AND OVER	59	16	43	10	22	6	21	48
UNDER 18 YEARS	4 396	2 227	2 169	996	947	1 229	1 222	5 068
65 AND OVER	1 039	426	613	282	373	174	238	964
MEDIAN AGE	24.1	21.8	26.5	28.7	33.0	17.3	19.9	23.7

[fols. 42-43] Reporter's and Clerk's Certificates to foregoing transcript omitted in printing.

[fol. 44] IN THE SUPREME COURT OF GEORGIA

Case No. 23397

PHIL WHITUS, Plaintiff In Error,

vs.

THE STATE OF GEORGIA, Defendant In Error

From the Superior Court of Mitchell County

Case No. 1229

* * * * * * *

[fol. 45] ENUMERATION OF ERRORS

1

The Court erred in failing to direct a verdict of acquittal for the defendant because of failure of the State to prove, beyond a reasonable doubt, the guilt of the defendant in the crime alleged to have been committed.

2

The Court erred in failing to make its own inquiry into the competency of the testimony of Leon Davis after his admission under cross examination that he was both drunk and insane at the time the crime was committed.

3

The Court erred in failing to charge the jury that drunkeness which dethrones reason and memory, shall incapacitate during its continuance.

4

The Court erred in allowing the witness, Leon Davis to testify, since the said Leon Davis was the perpetrator, and the statement solicited from him by the Solicitor was prior

to his conviction, which made said statement a confession and it did not appear from the record that the Solicitor advised the witness that he had a right to remain silent and it also appeared affirmatively from the record that the Honorable Clarence Mayfield, attorney for the witness, [fol. 46] was not present when the confession was exacted from the witness.

5

The Court erred in dismissing the Challenge to the Array of Petit Jurors since it affirmatively appeared that 49% of the population of Mitchell County were Negroes and only 7% of the petit jury were of the Negro race.

Respectfully submitted, P. Walter Jones.

P. Walter Jones, 505 Park Avenue, Albany, Georgia.

[fol. 47] Certificates of Service omitted in printing.

[fol. 48] IN THE SUPREME COURT OF GEORGIA

Case No. 23397

PHIL WHITUS,

v.

THE STATE

JUDGMENT—April 12, 1966

This case came before this court upon an appeal from the Superior Court of Mitchell County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur.

Bill of costs, $30.00.

[fol. 49] IN THE SUPREME COURT OF GEORGIA

Case No. 23397

Appeal from Mitchell Superior Court, Case No. 1229

PHIL WHITUS, Plaintiff in Error,

vs.

THE STATE OF GEORGIA, Defendant in Error

MOTION FOR REHEARING

Comes now PHIL WHITUS, plaintiff in error in the above stated case, herein referred to as movant, and within the time allowed by law moves for a rehearing and reversal of the decision rendered by this Court on April 12, 1966. The decision of the Court herein was contrary to the contentions of movant, and he respectfully shows to the Court that in rendering said decision the Court overlooked certain material facts in the record and certain decisions, statutes, and a provision of the Constitution of Georgia, which are controlling as authority and which require a different judgment from that rendered; and further that the Court erroneously construed or misapplied certain provisions of law and certain controlling authorities hereinafter set forth.

No charge denied, All the Justices concur.

Preliminary Statement

Before pointing out to this Honorable Court the various grounds upon which they should grant a rehearing, we do not think it would be unwise to show to this Honorable Body that the sum and substance of the whole opinion of this Court and the verdict of the jury below means that [fol. 50] the life of a man will be taken on the sole evidence of one witness, an accomplice, who was drunk and insane on the night his testimony was given. We realize the onerous burden of this Court in attempting to make each and every one of its decisions in strict compliance with the law of the land, we never the less think, without hesitancy, that some times strict rules of law must be ignored

for the sake of justice and mercy and decisions rendered in accordance therewith.

After thoroughly reading the affirming decision of this Court, we note that the entire opinion is based upon the testimony of a man who admits under cross examination that he was drunk on the night of the occurrence, and that while drunk he was insane and remembered nothing. Certainly this Court should not condemn a man to death on this evidence alone regardless of the attempts of this Court to adhere strictly to the principles of law.

Grounds for Motion for Rehearing

1. The Court has overlooked the following material facts in the record, to wit:

(a) It is contrary to the Constitution of the State of Georgia and to the Constitution of the United States of America to convict a man with no evidence whatsoever, and the only evidence upon which the Court could base its decision was the testimony of Leon Davis who, by his own admission, was insane and drunk at the time of the killing.

2. The Court has overlooked the following statute, which is controlling as authority and which would require a [fol. 51] different judgment from that rendered, in that:

(a) Drunkenness, which dethrones reason and memory, shall incapacitate during its continuance. *Code Section 38-1610.*

3. In its headnote enumerated as 1(b), the Court cites as ruling authority the decision of Alfred versus State, 6 Ga. 483 (2) in which it states that a verdict supported by any competent evidence will not be disturbed by the courts. In adhering to this principle of law, the Court must admit that the statement of Leon Davis was competent evidence and was sufficient to sustain a verdict of guilty and, therefore, to allow sending a man to the electric chair.

4. The Court bases its entire opinion on the evidence of Leon Davis and even cites in the headnote of its opinion the testimony of Leon Davis' admission that he was insane at the time of the killing.

5. The Court in some cases, unless there is a challenge to the competency of the witness, may allow the evidence

to go to the jury for their consideration. However, *Code Section 38-1610* states specifically "the Court shall by examination decide upon the capacity of one alleged to be incompetent from idiocy, lunacy, or insanity, or drunkenness, or infancy,". This does not leave the lower court with the discretion of whether or not to make an inquiry nor does it place the burden upon the shoulders of the defending attorneys to demand the inquiry but it makes such inquiry a must and before such inquiry is made the evidence adduced or procured from said witness should be [fol. 52] excluded in its entirety from the jury. The laws of the State of Georgia make it mandatory for the judge to follow that reasoning, and if any doubt rests in the mind of the Court, he should clarify that doubt in his charge to the jury.

6. There is no doubt that in some cases in the absence of a written request the trial judge does ordinarily charge the jury concerning the competency of a witness, however, where the witness himself asserts he was both drunk and insane this fact would not be true.

7. In the fourth enumeration of error it was impossible for movant's counsel to make the objection that the perpetrator made a confession to the Solicitor prior to the trial and before his conviction, and that such confession was made without the presence of perpetrator's counsel and without the advice of the Solicitor that he had the right to remain silent. These facts were not known since the Solicitor himself made the statement in open court after the testimony of Leon Davis.

8. In its decision on the proportionate number of whites and negroes on the jury box, we will follow the reasoning that purposeful discrimination is not sustained by a showing that on a single grand jury the number of members of one race is less than that race's proportion of the eligible individuals. However, in *Adkins versus Texas, 325 U.S. 398,* the Court overlooked the fact that this was the first time in more than 25 years in the County of Mitchell where any negro was called for service on any petit jury, and no negro to date has served on any petit jury. We believe this is in itself, alone, sufficient to show discrimination in the selection of the jurors.

[fol. 53] We would like to further comment that the way

jurors are selected in the State of Georgia is in itself discriminatory since the statutes of the State of Georgia require the jury commissioners to select prospective jurors from the tax payers digest when at the time this law was enacted this Court can take official cognizance of the fact that white tax payers outnumbered negro tax payers by at least 10 to 1.

9. We would like to vehemently oppose the conclusion reached in Judge Duckworth's opinion in paragraph 3 wherein he stated that the movant in this case had more than eight months to see, hear and have the opportunity of examining all witnesses against him in the previous trial. Leon Davis was only approached as a witness the night before his trial and the defendant's arraignment, if properly done, would have certainly given to the movant the right to further investigate and test the accuracy of Leon Davis' testimony which was damaging.

Conclusion

We have attempted to point out the matters overlooked by the Court and have undertaken to refrain for rearguing the case, and we shall not here repeat our previous arguments, but we do invite a rereading of the supplemental brief heretofore filed on behalf of movant.

Upon each and every ground of this motion, we submit that a rehearing should be granted and the decision reversed.

Respectfully submitted, P. Walter Jones and Morris Brown, By P. Walter Jones, Attorneys for Movant.

P. O. Address: P. O. Box 1115, Albany, Georgia.

[fol. 54] GEORGIA, DOUGHERTY COUNTY.

I, P. WALTER JONES, counsel of record for PHIL WHITUS, movant, certify that upon careful examination of the opinion of the Court in the above stated case, I believe that the facts, statutes, constitutional provision, and decisions pointed out in the foregoing motion for rehearing have been overlooked, or that such provisions of law or controlling authority have been erroneously construed or misapplied.

This 21st day of April, 1966.

P. Walter Jones.

Certificate of service omitted in printing.

[fol. 55] IN THE SUPREME COURT OF GEORGIA

No. 23397

PHIL WHITUS

v.

THE STATE

ORDER DENYING REHEARING MAY 5, 1966

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it bere hereby denied.

[fol. 56] Clerk's Certificate to foregoing transscript omitted in printing.

[fols. 57-58] IN THE COURT OF APPEALS OF THE STATE OF GEORGIA

Atlanta.

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

LEON DAVIS

v.

THE STATE #41968

MINUTE ENTRY OF ORDER TRANSFERRING CASE—March 10, 1966

This case came before this court on appeal from the Superior court of Mitchell county, and upon a record formally certified and transmitted by the clerk of that court; and this court being of the opinion that the case is one of which the Supreme Court and not this court has jurisdiction, the clerk of this court is ordered to dismiss the case from the files and to transmit the record to the clerk of the Supreme Court together with a copy of this order.

Court of Appeals of the State of Georgia:

Clerk's Office, Atlanta, Mar. 10, 1966

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

[Copy illegible] Deputy Clerk.

[fol. 59] IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

Case No. 1229

THE STATE, vs. LEON DAVIS

NOTICE OF APPEAL—Filed February 25, 1966

Notice is hereby given that LEON DAVIS, defendant above named, hereby appeals to the Court of Appeals from the judgment of conviction and sentence entered herein on the 18th day of October, 1965.

The offense for which defendant was convicted is Murder, and the sentence imposed is as follows: Death in the Electric Chair.

The Clerk will please forward the entire record in said case.

Dated: February 24, 1966.

B. Clarence Mayfield, Attorney for Appellant.

910 West Broad Street, Savannah, Georgia.

[File endorsement omitted.]

Certificate of Service omitted in printing.

[fol. 60] [File endorsement omitted]

IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA.

Number —

STATE OF GEORGIA,

vs.

LEON DAVIS

CHALLENGE TO THE ARRAY OF PETIT JURORS—Filed October 16, 1965

Your petitioner, LEON DAVIS, files this his challenge to the array of Petit Jurors selected and now serving on the Petit Jury for the October Term of Superior Court of Mitchell County, Georgia, and shows as follows:

1

The Grand Jury for the July Term of Mitchell County Superior Court has indicted your petitioner for the crime of murder, and it is the intention of the Honorable Fred Hand, Jr., Solicitor General of Mitchell County Superior Court, to try your petitioner before the panel of Petit Jurors summoned for the October Term of the Mitchell County Superior Court.

2

Your petitioner shows that he is a member of the Negro race and has been accused by the State of Georgia of murdering a White farmer in Mitchell County, Georgia.

3

Your petitioner shows that the panel of Jurors which will be cast upon your petitioner are illegally and unconstitutionally composed, and they have been drawn and summoned in derogation of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States; and is further in violation

of Article One, Paragraphs One and Twenty-five of the Constitution of the State of Georgia of 1945.

4

Your petitioner further shows that the said panel of Jurors is illegal and unconstitutional for the following reasons, to wit:

[fol. 61] (a) Up until September of 1959 the Jury Commissioners of Mitchell County, Georgia, had not placed a name of any Negro in the jury box and on September of 1959, without revising the jury list, the Jury Commissioners deliberately placed the names of Twenty-six Negroes in the jury box, said names being selected with the sole purpose of deliberately placing Negroes' names in the box to meet the constitutional requirements, and said names were not placed by the legal drawing of jurors in a revision of the jury lists as required by law.

(b) On the date of the filing of this challenge no Negro has ever served on a Petit Jury in Mitchell County, Georgia. The population of Mitchell County is approximately 19,652 of which 9,000 are Negroes.

(c) The said panel of jurors which is now cast upon your petitioner contains at least 7 Negroes, but your petitioner alleges that the revision of the jury list was done solely and exclusively for the purpose of trying your petitioner and not for the purpose of an honest attempt on the part of the Jury Commissioners to have a constitutionally composed jury as required by law.

(d) Your petitioner further alleges that Negroes have been systematically excluded from jury lists in Mitchell County, Georgia, and that the token or other number of Negroes included on the panel of jurors cast upon your petitioner was not selected in accordance with the laws of the State of Georgia but was selected so as to deliberately include a token or other number of Negroes solely for the trial of your petitioner.

(e) Your petitioner contends and alleges that under the law in force in the State of Georgia at the time of the filing of this petitioner the Jury Commissioners are required to select the names of prospective jurors only from the Tax Receiver's Digest, and the Tax Receiver is required

by Georgia law to maintain the Tax Digest on a racially segregated basis, and therefore, the mechanics for the selection of jurors required by the laws of the State of Georgia make discrimination probable, and as such mechanics for the probability of discrimination do exist by law, it follows that any jury selected under the mandatory requirements of such laws would be unconstitutionally composed.

[fol. 62] (f) Your petitioner further alleges that under the law in force in the State of Georgia at the time of the filing of this petition the Jury Commissioners are required to select upright and intelligent men to serve as jurors and that this requirement establishes on its face and in its application a non-ascertainable standard for jury selection and is void for vagueness.

(g) Your petitioner further alleges that the statutory process for the selection of the names of Petit Jurors and the manner in which said Petit Jurors in Mitchell County, Georgia, were selected has resulted in the systematic exclusion and inclusion of Negroes on the juries in Mitchell County, Georgia.

All of which are in violation of the Due Process of Law and Equal Protection of Law clauses of the Fourteenth Amendment of the Constitution of the United States and the guarantees of Article III, Section 2, and the Fifth, Sixth and Seventh Amendments of said Constitution.

Wherefore, the said Leon Davis prays that his challenge to the array be inquired into and that said array be quashed, and that the said Leon Davis have such and other relief as will meet the ends of equity and justice.

This 16th day of October, 1965.

B. Clarence Mayfield, Attorney for Petitioner.

[fol. 63] *Duly sworn to by Leon Davis; jurat omitted in printing.*

[fol. 64] IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

Number —

STATE OF GEORGIA

vs.

LEON DAVIS

ORDER TO SHOW CAUSE—October 16, 1965

The above and foregoing petition having been read and considered, it is hereby

ORDERED AND ADJUDGED: that a copy of the within challenge be served as soon as possible upon Mr. Fred Hand, Jr., Solicitor General, and that the same be filed in the office of the Clerk of Superior Court of Mitchell County, Georgia.

IT IS FURTHER ORDERED: that the said Fred Hand, Jr., show cause before me on the day of October, 1965, at— o'clock —.M., at the Court House in Camilla, Georgia, as to why the prayer contained in said petition should not be allowed.

This 16th day of October, 1965.

Carl E. Crow, Judge, Superior Court Mitchell County, Georgia.

[fol. 65] IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

Number —

STATE OF GEORGIA,

vs.

LEON DAVIS

CERTIFICATE OF SERVICE

The undersigned, Fred B. Hand, Jr., Solicitor of Mitchell County Superior Court, does hereby acknowledge service of the within and foregoing petition. All further service and process expressly waived.

This 16th day of October, 1965.

Fred B. Hand, Jr., Solicitor of the South Georgia Judicial Circuit.

[fol. 66] IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

INDICTMENT—Filed April 12, 1965

THE GRAND JURORS, selected, chosen and sworn for the County of Mitchell to-wit:

1 C. B. Collins Foreman.

2 D. B. Harrell
3 James Lee Adams
4 John S. Gaye
5 ~~R. Doff~~
6 R. T. Hochliffe
7 ~~F. T. Hunter~~
8 Drewry Robinson Sr.
9 J. C. Bellamy Jr.
10 Ray Nazworth
11 ~~Winston Pratt~~
12 J. C. McCullough
13 H. C. King
14 John C. Kemper
15 Lee Ann Collins
16 Drury O. Hayes
17 Clara A. Scruggs
18 Walter L. Dickson
19 Hayward Swipes
20 Thea Thompson
21 L. T. Hatcher
22 Louis M. Bailey
23

In the name and behalf of the citizens of Georgia, charge and accuse Leon (Lynn) Davis and Phil Whitus with the offense of Murder for that the said accused, in the County aforesaid, on the 15th day of November in the year of our Lord, Nineteen Hundred and Fifty Nine with force and arms, and unlawfully, did then and there feloniously and with malice aforethought kill and murder, one James Eldridge "Peter" Glenn, by shooting him to death with a pistol; all

contrary to the laws of said State, the good order, peace and dignity thereof.

FRED HAND, JR., Solicitor General

[fol. 67]

WITNESSES FOR THE STATE

Mrs. Peter Glenn (Douglas Lawrence)
John M. Maples
Lynnwood Williford
Lt. Cecil Franklin
Dr. Herman D. Jones

The Defendant Leon Davis

waive 5 formal arraignment; copy Bill of Indictment, list of witnesses sworn Before the Grand Jury, and agree 5 to strike from a panel of 48 Jurors and plead — not guilty.

This 18 day of October 1965

B. Clarence Mayfield
Defendant's Attorney.

Fred Hand Jr.
Solicitor General.

No. 1229

SUPERIOR COURT

Mitchell County

April Term, 1965

THE STATE

vs.

Leon (Lynn) Davis
Phil Whitus

Murder

True BILL

Brantley Collins
Foreman.

FRED HAND, JR., Solicitor General

John M. Maples
Prosecutor.

SPECIAL PRESENTMENT

Received in Open Court from the sworn Grand Jury Bailiff, and filed in office this day of

FILED IN OFFICE

19 APR 12 1965

Minnie B. Hayman Clerk.
CLERK SUPERIOR COURT

The Defendant .....

.....

on being formally arraigned, pleads

.....guilty.....

This .....day of .....

19.....

.....

Solicitor General.

.....

Defendant's Attorney.

We the Jury find the Defendant Leon (Lynn) Davis guilty.

.....

.....

.....

This 18th day of October

19 65

Trudell Adams

Foreman.

We the Jury find the Defendant Phil Mitchell guilty

This 19th day of October 1965

AB Mitchell

Foreman

[fol. 68] IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

Number 1229

STATE OF GEORGIA

vs.

LEON (Lynn) DAVIS

SENTENCE—Filed October 18, 1965

The jury having returned a verdict of guilty, without a recommendation of mercy, it is considered, ordered and adjudged by the court that the defendant, LEON (Lynn) DAVIS, be taken from the bar of this court to the common jail of Mitchell County, Georgia, to be held there until the sheriff of said County and his lawful deputy and a sufficient guard shall in the manner and within the time prescribed by law, take the defendant LEON (Lynn) DAVIS, to the penitentiary of this State, where, it is ordered, that within the walls of said penitentiary, that the defendant on the 10th day of December, 1965 be put to death by electrocution as provided by law.

There shall be present at such execution the Warden of the penitentiary, who shall serve as executioner, and at least two assistants, two physicians to determine when death supervenes, an electrician, a suitable guard, and if the condemned person so desires, his counsel, relatives and such clergymen and friends as he may request.

LEON (Lynn) DAVIS, may God have mercy on your soul.

In open court, this October 18, 1965.

Carl E. Crow, Judge Superior Court, South Georgia Judicial Circuit.

[File endorsement omitted.]

[fol. 69] IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

STATE OF GEORGIA

vs.

LEON DAVIS

MOTION FOR NEW TRIAL—Filed October 28, 1965

The Defendant herein being dissatisfied with the judgment and sentence in said case, come within the time allowed by law and moves the Court for a new trial on the following grounds, to wit:

1. Because the verdict is contrary to the evidence and without evidence to support it.
2. Because the verdict is decidedly and strongly against the weight of evidence.
3. Because the verdict is contrary to the law and principles of justice and equity.

WHEREFORE, Defendant prays that these his grounds for a new trial be inquired into by the Court and that he be granted a new trial.

B. Clarence Mayfield, Attorney For Movant.

910 West Broad Street, Savannah, Georgia 31401

[File endorsement omitted.]

[fol. 70] IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

LEON DAVIS

vs.

STATE OF GEORGIA

ORDER—RULE NISI—October 28, 1965

The foregoing Motion read and considered. Let the same be filed and served upon the Solicitor General of The South Georgia Judicial Circuit, and let the Solicitor General of the South Georgia Judicial Circuit show cause before me on the 4 day of Dec., 1965 at 10 o'clock a.m., at my office in the Mitchell County Courthouse, Camilla, Georgia, why the motion should not be granted.

Let this Order act as a supersedeas until further order of Court.

In the meantime and until the final hearing of said motion, whenever the same may be had, movant is allowed to amend and perfect the motion.

If, for any reason, said motion is not heard and determined at the time and place above fixed, it is Ordered that the same be heard and determined at such time as may be agreed upon by counsel, and upon failure to agree, then at such time and place as the presiding Judge may fix, on the application of either party, of which time and place the opposite party shall have at least five days notice; and if for any reason this motion is not heard and determined before the beginning of the next term of this court, then the same shall stand on the docket until heard and determined at any term thereafter.

This 28 day of October, 1965.

Carl E. Crow, Judge, Mitchell County Superior Court, South Georgia Judicial Circuit.

[fol. 71] Acknowledgment of service omitted in printing.

[fol. 72] IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

LEON DAVIS, also known as LEN DAVIS

vs.

STATE OF GEORGIA

MOTION FOR CONTINUANCE OF MOTION FOR NEW TRIAL—Filed December 3, 1965

COMES now, LEON DAVIS also known as LEN DAVIS, movant, by and through his attorney of record, in the trial and the original motion for new trial, heretofore filed, with leave of court first had and obtained, and files this his motion for continuance for motion for new trial and for grounds shows:

1. Movant shows that the record of the trial has not been made available to his attorney of record as of November 30, 1965, and that the hearing on the original motion for new trial is schedule for a hearing in the Superior Court of Mitchell County, Georgia, on December 4, 1965 at 10:00 o'clock A.M., and that the said attorney wishes to prepare an amendment to his original motion for new trial, but does not feel that said amended motion can be properly prepared by December 4, 1965.

WHEREFORE, Movant prays, that the date for the hearing of motion for new trial be continued until the 29th day of Jan., 1966, without prejudice.

Clarence Mayfield, Attorney for Movant.

[File endorsement omitted.]

[fol. 73] IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

LEON DAVIS, also known as LEN DAVIS

vs.

STATE OF GEORGIA

ORDER ALLOWING CONTINUANCE—December 3, 1965

The hearing of the motion for new trial in the above style case is, upon motion of counsel for LEON DAVIS also known as LEN DAVIS, is continued until the 29th day of Jan., 1966, at 10 o'clock a.m., in the Superior Court of Mitchell County, Georgia, and in the meantime and until said hearing is had, all provisions relating to the original motion for new trial are continued in full force and effect, without prejudice.

This 3rd day of Dec., 1965.

Carl E. Crow, Judge, Superior Court, Mitchell County, Georgia.

[fol. 74] Acknowledgement of service omitted in printing.

[fol. 75] [File endorsement omitted]

IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

STATE

VS.

LEON DAVIS

AMENDED MOTION FOR A NEW TRIAL—Filed January 29, 1966

AND NOW COMES the movant and by leave of the court first had and obtained files that his amended motion for a new trial and says:

1. That the Court erred in permitting the reading of the testimony of the late John M. Maples, who was deceased at the time the testimony was read. The action of the Court deprived the defendant, LEON DAVIS, of his right to cross-examine the alleged statement made by the late Sheriff John M. Maples and thus resulted in a violation of the defendant's constitutional right of due process as guaranteed and assured to him by the Fourteenth Amendment of the Constitution of the United States. The action of court in refusing to strike out said evidence of the late Sheriff John M. Maples in permitting the Solicitor General to argue to the jury along these lines was highly inflammatory and prejudicial and should have been excluded from the consideration of the jury and violated the defendant's due process as provided by law.

2. That the Court erred in permitting evidence offered by the Solicitor General in relation to the State's Exhibits "S-10 and S-11", because it was more conclusively established that either State's Exhibits "S-10 and S-11" were the weapons used to murder Peter Glenn, therefore should have been excluded. The action of the Court in refusing to exclude from evidence said Exhibits "S-10 and S-11" and permitting the Solicitor General to argue to the jury with refer-
[fol. 76] ence to said Exhibits "S-10 and S-11", was highly prejudicial because it was based on an assumption that was not justified by the evidence and from which the Solicitor General could not draw a logical conclusion and which was

highly inflammatory and prejudicial and should have been excluded from the consideration of the jury and violated the defendant's due process as provided by law.

3. That the Court erred in one and all respects set out in the Amended Motion for New Trial and for the reasons set forth thereon.

WHEREFORE, MOVANT PRAYS, that said Amended Motion for A New Trial be allowed and Ordered filed that a New Trial be ordered in said case one or more of grounds set forth in the original Motion for New Trial and/or in the Amended Motion for New Trial.

B. Clarence Mayfield, Attorney for movant.

The undersigned, Robert Culpepper, as Judge of Southern Georgia Judicial Circuit certifies that he is disqualified to act in this matter.

This January 29, 1966

Robert Culpepper, Judge Superior Courts Southern Georgia Judicial Circuit.

[fol. 77] ORDER—January 29, 1966

The recitals of fact in the foregoing amended motion for a new trial being true, the court approves the same and orders said amended motion for a new trial, together with the exhibits attached thereto, made a part of the record in this case.

In Open Court this 29th Day of Jan., 1966.

George R. Lilly, Superior Court, South for Judicial Circuit Presiding.

[fol. 78] Certificate of service omitted in printing.

[fol. 79] IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

Case No. 1229

THE STATE

vs.

LEON (Lynn) DAVIS

ORDER OVERRULING MOTION FOR NEW TRIAL—January 29, 1966

The motion for new trial in the above case, as amended, is hereby denied and overruled.

This 29 day of January, 1966.

/s/ George R. Lilly, Judge Superior Courts Southern Judicial Circuit, Acting on Behalf of Judge Robert Culpepper, Who is Disqualified in the Above Styled Case.

[File endorsement omitted.]

[fol. 80] MITCHELL COUNTY, GEORGIA:

I, Martha B. Hoggard, Clerk Superior Court, in and for said County and State, do hereby certify that the Notice of Appeal contained herein is the Original Notice of Appeal, and the following items contained within are true and complete copies of their originals; following is the Reporter's copy of the Challenge To The Array of Petit Jurors, and the Reporter's Transcript of Evidence, each this day separately certified by me and transmitted by me with the said attached papers to the Court of Appeals of Georgia, and that they contain all of the Record on Appeal required by the said Notice of Appeal and Amendments thereto to be transmitted to the Court of Appeals.

WITNESS my hand and the seal of said Office, this 7th day of March, 1966.

Martha B. Hoggard, Clerk Superior Court, Mitchell County, Georgia.

[Seal]

[fols. 81-82] IN THE SUPERIOR COURT OF MITCHELL COUNTY, GEORGIA

THE STATE

vs.

LEON DAVIS

Transcript of Hearing on Challenge to the Array

Before his honor, CARL E. CROW, October 16, 1965.

Appearances:

Fred Hand, Jr., Solicitor General, South Georgia Judicial Circuit, Pelham, Georgia, for State.

B. Clarence Mayfield, Savannah, Georgia, for defendant.

[File endorsement omitted.]

[fol. 83] STIPULATIONS

It is stipulated that the defendant, Leon Davis, is present in open court and represented by counsel from the inception of these stipulations and agreements, and counsel for defendant acknowledges that the defendant is fully cognizant of what is going on.

It is stipulated that according to the best knowledge of the clerk of the Superior Court of Mitchell County, Georgia, that there were 90 Jurors summoned; that four white Jurors were excused; that there were seven Negroes on the panel and possibly more; that there is no designation of race indicated on the Official List of Jurors; and that the Clerk makes the statement regarding the seven Negroes because she is personally acquainted with those seven individuals and on no other basis.

It is stipulated that the testimony of Robert Culpepper delivered in this court on April 16, 1965, on the challenge to the array of Grand Jurors and Petit Jurors in this case, shall be used in this hearing, insofar as it relates to the Petit Jury; that the Solicitor General and the Attorney for the Defendant shall designate to the Reporter the pertinent parts of such testimony, and in case of disagreement between them the Court will make the final determination.

[fol. 84] W. H. CAMPBELL, SWORN:

Direct examination.

By B. C. Mayfield:

Q. State your name and position, Mr. Campbell.
A. W. H. Campbell, Tax Receiver.

Q. Mr. Campbell, prior to the year 1965, you were in control of the tax digest for Mitchell County, Georgia?
A. Yes, sir.

Q. You had two classes of taxpayers, colored and white?
A. Yes.

Q. Did the white taxpayers make their returns on white sheets?
A. Yes.

Q. And did the colored taxpayers make their returns on yellow sheets?
A. Yes, sir.

Q. And that has been the practice of your office operating under a State law——

Solicitor Hand: Your Honor, I object to this line of questioning. It would appear to me that the sole issue involved here today to be considered by this Court and any future courts is whether or not the Petit Jury which is cast upon the defendant in this case has been constitutionally selected, and whether the tax list from which this Petit Jury by law was drawn is of a constitutional nature. What has gone on in years gone by would apparently be irrelevant.

[fol. 85] B. C. Mayfield: If Your Honor please, I intend to show by Tax Commissioner Grogan that they used the 1964 Tax Digest, and one of the allegations in our petition is that under the existing laws in the State of Georgia, and according to recent decisions of the Supreme Court of the United States that if Mr. Campbell follows the letter of the law he cannot select a constitutional jury, because he has sworn to maintain the Tax Digest on a segregated basis. The tax list that we are concerned with now was taken from his 1964 records and was drawn in February 1965, and therefore, the 1964 records would of a certainty be admissible in this hearing.

Solicitor Hand: Your Honor, as a matter of procedure, would it not be more appropriate if Mr. Mayfield would first lay the foundation for this challenge by putting the Jury Commissioner on the stand to determine what they did in fact do?

The Court: I will let him do it any way he wants to.

Q. Mr. Campbell, prior to 1965 the negro taxpayers were kept on yellow sheets?

A. Yes, sir.

Q. And the white taxpayers were kept on white sheets?

A. Yes.

Q. Were you under instructions from any State official to maintain your records that way?

A. Well, I guess that's the way they always had done it.

[fol. 86] Cross-examination.

By Solicitor Hand:

Q. Mr. Campbell, you don't know what procedure the jury commissioners used in selecting any jurors for Mitchell County, do you?

A. No.

B. C. Mayfield: I would like to call Mr. Grogan to the stand.

Mr. Grogan, Sworn.

Direct examination.

By B. C. Mayfield:

Q. Mr. Grogan, are you a tax commissioner?

A. No.

Q. Are you a jury commissioner?

A. Yes, sir.

Q. How many jury commissioners are there in this county?

A. Six, I think.

Q. You have met with those six jury commissioners?

A. Yes, sir.

Q. Are all of those jury commissioners white people?
A. Yes.
Q. Now, Mr. Grogan, when did y'all revise the jury list?
A. February of this year.
Q. February of this year?
[fol. 87] A. Yes, sir.
Q. What records, if any, did you use in revising that list?
A. Well, we used the tax digest.
Q. You used the tax digest. The one maintained by Mr. Campbell?
A. Yes, sir.
Q. The law enforces upon you, Mr. Grogan, the duty of selecting the most intelligent and upright citizens. How did you accomplish that duty imposed upon you by law?
A. Well, we selected the ones from our communities, each individual community, the ones that we knew personally.
Q. The ones you personally knew? You didn't give any taxpayers any intelligence tests, did you?
A. No.
Q. You didn't call them in to talk to them?
A. No.
Q. Did you attempt to get their record, if they had any criminal record?
A. No, we didn't.
Q. What community do you reside in in the county?
A. Pebble City.
Q. You were familiar with the residents of Pebble City?
A. Yes sir.
Q. And the adjacent farms?
A. Yes.
Q. Now, Mr. Grogan, you of necessity know more white taxpayers than you do colored taxpayers, do you not?
A. Yes, I do in that community.
[fol. 88] Q. And the jurors from the Pebble City Community were more or less left up to your discretion?
A. Yes.
Q. Mr. Grogan, the jurors that were used on your revised tax list, did you use the revised tax digest that was kept by Mr. Campbell for the year 1964?
A. Yes sir.

Q. And were the negro taxpayers kept separate and designated by different colored paper?

A. No.

Q. They were the same?

A. All in one book.

Q. Was there any indication designating the negro taxpayer and designating the white taxpayer?

A. No, I don't think so.

Q. You don't think so, sir?

A. There wasn't.

Cross-examination.

By: Solicitor Hand:

Q. Mr. Grogan, at the time the jury commissioners met in February of this year, was it your intention to revise this list in view of a case that the Judge brought to your attention?

A. He advised us to revise the jury list.

Q. In doing so did you purposely include or exclude anyone on the revised jury list because of their race, creed, or national origin?

A. No.

Q. Did you personally practice any discrimination be-
[fol. 89] cause of anyone's race, creed or national origin?

A. We didn't.

Q. You didn't revise this jury list for the sole and exclusive purpose that the State might try Leon Davis, did you?

A. No, I did not.

Q. Did you, if in fact the tax list of Mitchell County, Georgia, was segregated, allow this to effect your decision in anyway as to whether or not you would take a prospective man as a prospective juror?

A. No.

Q. Did you purposely include or exclude anyone from a segregated tax digest, if in fact there was a segregated tax digest?

A. No.

Q. In relation to the standards which you applied in selecting the most intelligent and upright jurors for prospective jury duty, I believe you testified that you tried to abide by the Georgia law in selecting the most intelligent

and upright citizens in the community, and you did it on the basis of personal knowledge of the individuals. Is that correct?

A. That's correct.

Q. Although you might personally know, for example, Joe Doe from Pebble City, would your recommendations in relation to this juror be final, or would the entire jury commission pass on each individual prospective juror?

A. The entire commission passed on each individual juror.

Q. In other words, you would only make the recom-
[fol. 90] mendation as to whether an individual would be qualified?

A. That's right.

Q. Mr. Grogan, I ask you a further question—in examining the prior tax digest, that is prior to 1964, did you determine whether or not the number of negroes making tax returns was as great or nearly as great as white people making tax returns in Mitchell County?

A. In the book we had it wasn't as big a list.

Q. What percentage—in years gone by what would you say the percentage of negro tax returns was to the overall tax return?

A. It would be about thirty per cent, I guess.

Q. That would be your guess.

B. C. Mayfield: I object to years gone by. I have no objection to 1964, because he testified the jury list was made up from the 1964 tax digest, and I think only that tax digest is admissible here.

The Court: I will let it go in.

B. C. Mayfield: Your Honor, I have two questions to ask and I talked with Mr. Hand the other night and will probably require Mr. Grogan to refer to his volume report, and if Mr. Hand has no objection I would like to ask these questions and have Mr. Grogan report his answers at a later date. I would like to inquire of Mr. Grogan how many jurors are on the jury list and how many of those jurors are colored.

[fol. 91] Solicitor Hand: Your Honor, I submit that the witness can answer to his own personal knowledge.

Redirect examination.

By: B. C. Mayfield:

Q. Of your own personal knowledge, without examining those records, Mr. Grogan, can you tell me approximately how many jurors are on the list?

A. On the list now.

Q. Yes.

A. There's around six hundred.

Q. I'll ask you of your own personal knowledge approximately how many of those jurors are colored?

A. I'm afraid I couldn't.

B. C. Mayfield: Would you allow him to go get this information, rather than continue this hearing?

Solicitor Hand: Your Honor, I think one further question might clarify counsel's request.

Recross-examination.

By: Solicitor Hand:

Q. Mr. Grogan, the list that y'all composed of all jurors in Mitchell County, does it have any designation of race on that list?

A. After we had completed it, it didn't have any.

Q. It had no designation of race?

A. No.

Q. Therefore, you would be unable to determine who was a negro and who was not a negro from that list, unless you just happened to personally know them. Is that true?

[fol. 92] A. That's true.

Solicitor Hand: I would submit, your Honor, that it is impossible for Mr. Grogan to furnish this information.

Redirect examination.

By: B. C. Mayfield:

Q. Mr. Grogan, you said after it was completed. While it was being accomplished or making up the list, did you have a designation showing which ones were negroes?

A. Well, we knew which was a negro and which wasn't when we recommended him.

Q. All of the recommendations of the various jury commissioners were acted upon favorably, were they not?

A. Yes sir.

Q. So at the time you were making up the list you knew how many jurors there were and how many of those jurors were negroes, and do you have that information?

A. We didn't tally them that way.

Q. Would you have any approximate idea when the recommendations were made at that time as to how many were negroes?

A. I'd have to guess at it.

Q. Well, would you give us a reasonable guess?

A. Twenty five or thirty percent, I guess.

Recross-examination.

By: Solicitor Hand:

Q. Mr. Grogan, is this just a wild guess by you?

A. Yes sir.

Q. Could it be as high as eighty per cent or sixty per cent?

[fol. 93] A. Well, it could possibly be different.

Q. You just don't really know, do you?

A. I don't know.

Q. You don't know really what the percentage is, do you?

A. No, I'm not sure.

Redirect examination.

By: B. C. Mayfield:

Q. But to your best knowledge it was twenty five or thirty per cent?

A. Well, just guessing at it, that's right.

Recross-examination.

By: Solicitor Hand:

Q. And you could just as well guess there could be as many as forty or fifty per cent?

A. Well, I could, yes sir.

Redirect examination.

By: B. C. Mayfield:

Q. When I first asked you the question, Mr. Grogan, if you had sincerely thought there were fifty per cent, you would have said so, wouldn't you?

A. Well, if I had thought that, I would, but this is just a guess.

Q. In other words, your reasonable guess and as a member of the jury commission, there was only twenty five or thirty per cent?

A. I guess so.

Plaintiff Rests

[fol. 94] Recross-examination.

By: Solicitor Hand:

Q. Mr. Grogan, did you as jury commissioner participate in selecting twenty six negroes in the jury box?

A. The ones present in the box?

Q. Yes. Did you purposely put twenty six in there?

A. Not purposely, no.

W. A. Cain, Sworn

Direct examination.

By: Solicitor Hand:

Q. State your name, please.

A. W. A. Cain.

Q. Are you a jury commissioner of Mitchell County, Georgia?

A. I am.

Q. Were you present when the jury list was revised in February 1965?

A. I was.

Q. Will you relate to the Court the procedure you gentlemen used in revising this list, please?

A. First I believe we went thru the existing jury list, striking off the deceased and the ones who had moved away. Then we took the 1964 tax digest and went thru it with each individual commissioner making recommendations from his home locality, and each selection being passed on by all commissioners and each commissioner being given a chance to object to each recommendation.

[fol. 95] Q. Then did the jury commission as a whole pass on each individual prospective juror?

A. That's correct.

Q. If in fact there is some designation on the 1964 tax digest for this county of race, did this or did it not effect your selection of any prospective juror?

A. It did not.

Q. Did you or any other member of the jury commission, to your personal observation and knowledge, practice any discriminationin regard to race, color, creed or national origin in selecting any prospective juror for the present jury panel?

A. No sir.

Q. Do you have any idea of your own how many negroes are in the jury box of Mitchell County at this time?

A. I do not.

Q. Do you have any idea what percentage of tax returns are made by negroes on the Mitchell County Digest?

A. I do not.

Q. Do you know how many jurors are in the jury box in Mitchell County?

A. If I remember right somewhere between 500 and 600, in the upper 500's. It's in the vicinity of 600, total, I believe.

Q. In the selection of prospective jurors did the jury commissioners try to use the guideline of the most intelligent and upright citizens they personally knew?

A. In my case we did, and I suppose that the other commissioners did.

[fol. 96] Cross-examination.

By: B. C. Mayfield:

Q. You said between 500 and 600. Was that your total jury list?

A. I think that's right.

Q. That does not represent the number of negroes?

A. That represents the total list.

Q. You were using the Tax Digest, were you not?

A. Yes sir.

Q. The negro taxpayers returned theirs on yellow sheets?

A. We did not use the tax returns. We used the tax digest.

Q. On the Tax digest they are marked "colored" and "white" are they not, or are kept in separate sections?

A. Correct.

Q. The law casts upon you the duty to select the most intelligent and upright citizens. How do you proceed to do that? Did you give tests of their intelligence?

A. No sir, we did not.

Q. Did you check criminal records?

A. No sir.

Q. It was done, more or less, by knowledge of the jury commissioners?

A. Yes sir.

Q. All of the jury commissioners are white, are they not?

A. Yes sir.

Q. And each jury commissioner would take his section of the county and make his recommendations to the jury commission as a whole, and those recommendations were followed?

[fol. 97] A. In most cases. I don't know of a deviation, but it's possible there could have been.

Redirect examination.

By: Solicitor Hand:

Q. The jury list that the commissioners ultimately composed, did it have any designation of race on it?

A. It does not.

Solicitor Hand: The State rests.
B. C. Mayfield: We close.
Solicitor Hand: The State closes.
The Court: The Court overrules the motion and the case will be taken up next week.

[fols. 98-99] Reporter's and Clerk's Certificates to foregoing transcript omitted in printing.

[fols. 100-101] IN THE SUPREME COURT OF GEORGIA

LEON DAVIS, Plaintiff in Error,

vs.

STATE OF GEORGIA, Defendant in Error

ENUMERATION OF ERROR—Case No. 23424

AND NOW COMES the Plaintiff in Error and files this, his Enumeration of Errors which he alleges the court committed and shows:

1. That the Court erred in overruling and denying plaintiff in error's motion and amended motion for a new trial on the grounds and for the reasons stated therein.
2. The Court erred in dismissing the Challenge To The Array of Petit Jurors since it affirmatively appeared that 49% of the population of Mitchell County were Negroes and only 7% of the petit jury were of the Negro Race.
3. That the defendant being a pauper was unable to hire private investigators whereas a person of means charged with the same type of offense would have available these advantages, all of which restrictive acts were contrary to the general provisions of law that all persons are entitled to equal protection of the law.

Respectfully submitted, B. Clarence Mayfield.

910 West Broad Street, Savannah, Georgia.

Certificate of Service omitted in printing.

[fol. 102] IN THE SUPREME COURT OF GEORGIA

Case No. 23424

LEON DAVIS

v.

THE STATE

JUDGMENT—April 19, 1966

This case came before this court upon an appeal from the Superior Court of Mitchell County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur.

Bill of Costs, $30.00.

[fol. 103] IN THE SUPREME COURT OF GEORGIA

Case No. 23424

LEON DAVIS, Plaintiff in Error,

vs.

THE STATE OF GEORGIA, Defendant in Error

Appeal from Mitchell Superior Court, Case No. 1225

MOTION FOR REHEARING

Now comes LEON DAVIS, plaintiff in error in the above stated case, herein referred to as movant, and within the time allowed by law moves for a rehearing and reversal of the decision rendered by this Court on April 19, 1966. The decision of the Court herein was contrary to the contentions of movant, and he respectfully shows to the Court that in rendering said decision the Court overlooked certain material facts in the record and certain decisions, statutes, and a provision of the Constitution of Georgia, which are controlling as authority and which require a different judgment from that rendered; and further that the

Court erroneously construed or misapplied certain provisions of Law and certain controlling authorities hereinafter set forth.

Preliminary Statement

Before pointing out to the honorable Court the ground upon which they should grant a rehearing, we do not think it would be unwise to show to this honorable body that this is the first time in the history of Mitchell County that Negroes have served on petit juries, and it has been distinctly held that the deliberate inclusion of Negroes in a jury box would be as unconstitutional as their exclusion.

[fol. 104] Grounds for Motion for Rehearing

1. In its decision on the proportionate number of whites and Negroes on the jury box, we will follow the reasoning that purposeful discrimination is not sustained by a showing that on a single grand jury the number of members of one race is less than that race's proportion of the eligible individuals. However, in *Adkins versus Texas, 325 U.S. 398,* the Court overlooked the fact that this was the first time in more than 25 years in the County of Mitchell where any Negro was called for service on any petit jury, and no Negro to date has served on any petit jury. We believe that this is in itself, alone, sufficient to show discrimination in the selection of the jurors.

We would like to further comment that the way jurors are selected in the State of Georgia is in itself discriminatory since the statutes of the State of Georgia require the jury commissioners to select prospective jurors from the tax payers digest when at the time this law was enacted this Court can take official cognizance of the fact that white tax payers outnumbered Negro tax payers by at least 10 to 1.

Conclusion

We have attempted to point out the matters overlooked by the Court, and have undertaken to refrain from rearguing the case, and we shall not here repeat our previous arguments, but we do invite a rereading of the original brief heretofore filed on behalf of movant.

Upon this ground of this motion, we submit that a rehearing should be granted and the decision reversed.

[fol. 105] Respectfully submitted, Clarence Mayfield and Morris Brown, By: Morris Brown, Attorneys for Movant.

P. O. Address: 1122 Healey Building, Atlanta, Georgia 30303, Telephone JAckson 4-4456.

[fol. 106] GEORGIA, FULTON COUNTY:

I, MORRIS BROWN, counsel of record for LEON DAVIS, movant, certify that upon careful examination of the opinion of the Court in the above stated case, I believe that the facts, statutes, constitutional provision, and decisions pointed out in the foregoing motion for rehearing have been overlooked, or that such provisions of law or controlling authority have been erroneously construed or misapplied.

This 29 day of April, 1966.

Morris Brown.

Certificate of service omitted in printing.

[fol. 107] IN THE SUPREME COURT OF GEORGIA

23424

LEON DAVIS,

v.

THE STATE

ORDER DENYING REHEARING—May 5, 1966

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

[fol. 108] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 109] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1966

No. 519 Misc.

PHIL WHITUS and LEON DAVIS, Petitioners,

v.

GEORGIA

On petition for writ of Certiorari to the Supreme Court of the State of Georgia.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED, IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—October 10, 1966

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 650 and set for oral argument with case No. 253. A total of one hour is allotted for oral argument of both cases.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1969—336-939/220